



**California Regional Water Quality Control Board**  
**North Coast Region**  
**Bob Anderson, Chairman**



**Linda S. Adams**  
*Secretary for Environmental  
Protection*

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**Arnold  
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*Governor*

October 8, 2009

Karen O'Haire  
Senior Staff Counsel  
State Water Resources Control Board  
Sacramento, CA 95812-0100

Dear Ms. O'Haire:

Subject: Petitions of California Department of Forestry and Fire Protection; California Farm Bureau Federation, Forest Landowners of California, the Buckeye Conservancy, California Licensed Foresters Association, Association of Consulting Foresters of America, California Chapter; and Weger Interests, Ltd., Parker Ten Mile Ranch, Bradford Ranch, Miller Tree Farm, and PRH Comptche Properties (Categorical Waiver of Waste Discharge Requirements Order No. R1-2009-0038 for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region), North Coast Regional Water Quality Control Board. SWRCB/OCC Files A-2029, A2029(a), and A 2029(b) (Consolidated Petitions)

I am writing on behalf of the North Coast Regional Water Quality Control Board (Regional Board) in the matter of the Consolidated Petitions referenced above. By letter dated August 27, 2009, the State Water Resources Control Board (State Board) requested a response and administrative record within 30 days, and reissued that request by letter dated September 9, 2009, to an expanded interested parties list. Numerous parties have written to the State Board in support of the petitions, particularly small landowners that have existing nonindustrial timber management plans (NTMP). As indicated in this detailed response, changes made to the Categorical Waiver are appropriate given the prevalence of impaired waterbodies throughout the North Coast Region, reasonably necessary to protect and restore beneficial uses, and therefore in the public interest. The Regional Board crafted the Waiver conditions to provide TMDL coverage in what it intended to be a streamlined and least-burdensome way, and did not expect the outpouring of negative reactions expressed since the Waiver was adopted from our sister agency CalFire and individual NTMP landowners. It was not the Regional Board's intent to adopt a Waiver that generated such discord.

The Regional Water Board has other regulatory tools available to monitor and enforce water quality requirements for problematic NTMPs and is willing to consider relying on those, rather than the newly-adopted Waiver conditions for existing NTMPs. While this

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approach would not necessarily provide TMDL compliance for NTMP owners, the Regional Water Board and its staff believe that it is possible to modify the Waiver as it relates to existing NTMPs in order to resolve conflicts in an efficient manner and to promote a successful working relationship with CalFire in the future. In an August 4, 2009, letter to Crawford Tuttle, Chief Deputy Director of CalFire and Ginevra Chandler, CalFire Chief Counsel, the Regional Board Executive Officer offered to meet with CalFire at the soonest possible opportunity to explore solutions. The Regional Board has not received a response as of the date of this letter.

On September 25, 2009, Petitioners submitted a Request to Supplement Record through Administrative Notice with an action taken by the Central Coast Regional Water Board. The Regional Board reserves the right to respond to this request in a separate correspondence.

Enclosed is the Regional Board's response to the Consolidated Petitions and a copy of the administrative record. The record maintained by the Regional Board includes public documents related to the hearing item, an audio recording of the permit adoption hearing,<sup>1</sup> environmental documents submitted to the State Clearinghouse, and comments from interested parties and responses to comments. The file is reproduced in its entirety and accompanies this response. An index to the record is attached at the back of this memo (Attachment 1).

The Water Quality Control Plan for the North Coast Region (September, 2006), Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region (Resolution R1-2004-0087), the Action Plan and Staff Report for the Scott River Sediment and Temperature Total Maximum Daily Loads, Policy for the Implementation and Enforcement of the Non-Point Source Pollution Control Program, 2004 Categorical Waiver, Order No. R1-2004-0016, and the Report of the Scientific Review Panel on California Forest Practice Rules and Salmonid Habitat, presented as Exhibits QQQ-BBBB, are part of the administrative record, but hard copies are not included in the record because they are readily available at the State Water Board and on the internet. (Cal. Code Regs., tit. 23, § 648.3.)

Pursuant to California Code of Regulations, title 23, section 2050.6, we request that the State Water Board consider the following evidence that has become available since the Regional Water Board's action that is the subject of these petitions: 1) Board of Forestry Proposed Anadromous Salmonid Protection Rules, 2009, (originally published May 8, 2009, Re-noticed on July 24, 2009); and 2) Comments on the Proposed Anadromous Salmonid Protection Rules by Regional Board (September 3, 2009). (Exhibits NNN-PPP.)

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<sup>1</sup> The audio recording of the hearing is also available at: [http://www.waterboards.ca.gov/northcoast/board\\_info/board\\_meetings/06\\_2009/index.shtml](http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/06_2009/index.shtml). Accessing the audio recording on the internet is the easiest format; however, we have provided a compact disc of the hearing identified as Exhibit BBB.

This response will be posted on the Regional Board website at:

[http://www.waterboards.ca.gov/northcoast/publications\\_and\\_forms/available\\_documents](http://www.waterboards.ca.gov/northcoast/publications_and_forms/available_documents)

## **FACTUAL BACKGROUND**

Most water bodies in the North Coast Region are listed as impaired due to either excess sediment and/or elevated water temperature (section 303(d) of the Clean Water Act). (Exhibit WWW.) Discharges of sediment resulting from past land use activities, with timber harvest being one of the leading sources, are recognized as major contributing factors causing the impaired conditions. (Exhibit VVV.) Sediment discharge sources, or threatened discharge sources, from past and current timber harvest activities are present throughout the North Coast Region and continue to pose risks to water quality.

California Water Code section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate Regional Board a Report of Waste Discharge (ROWD) containing such information and data as may be required. Pursuant to Water Code section 13260, regional boards prescribe waste discharge requirements except when it finds, pursuant to Water Code section 13269 that a waiver of waste discharge requirements (WDRs) for a specific type of discharge is in the public interest. The State's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Implementation Policy) requires that "all current and proposed nonpoint source discharges must be regulated under WDRs, waivers of WDRs, a basin plan prohibition, or some combination of these tools" (2007 Basin Plan, 4-33.00).

In the North Coast Region, discharges of waste resulting from timber harvest activities that pose a low or insignificant threat to water quality are regulated by conditional waivers of WDR. Senate Bill 390 amended Water Code section 13269 to require that all existing waivers expire effective January 1, 2003, and that new waivers of waste discharge requirements for specific types of discharges must be reconsidered and, if appropriate, be renewed every five years. On June 23, 2004, the Regional Board adopted Order No. R1-2004-0016, Categorical Waiver for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region, and superseded the previous Categorical Waiver (Order No. R1-2003-0116, Interim Categorical Waiver for Discharges Related to Timber Operations in the North Coast Region). (Exhibit XXX.) That Order No. R1-2004-0016 was set to expire in 2009.

In preparation for the Waiver update and renewal, Regional Board staff provided formal noticing, both broad (newspapers and timber industry groups) and specific (individual foresters and interested parties), and conducted extensive early outreach efforts in order to make materials and staff available to answer questions from the timber industry and interested parties, including a public workshop on March 24, 2009, in Fortuna, and presentations at two CalFire-sponsored workshops in Ukiah on December 10, 2008 and in Eureka on January 14, 2009. Regional Board staff conducted an Initial Study and prepared a Mitigated Negative Declaration pursuant to the California Environmental Quality Act (CEQA). (Exhibits NN and OO.) On April 9, 2009, staff submitted the CEQA documents along with a draft Order to the State Clearinghouse. (Exhibits MM-

PP) On that date, staff posted a Notice of Public Hearing and Proposed Negative Declaration on the Regional Board web site along with the CEQA documents. (Exhibit QQ.) Substantial changes were made to the early draft Waiver in response to public comments. (Exhibit HH.) The Regional Board conducted a public hearing on June 4, 2009 in Santa Rosa, California, and after considering all evidence and hearing public comment, adopted Order No. R1-2009, the *Categorical Waiver of Waste Discharge Requirements for Timber Harvest Activities on Non-Federal Lands in the North Coast Region* (Categorical Waiver), which revised and superseded the 2004 Categorical Waiver. (Exhibit AAA.)

The Categorical Waiver defines five categories of timber harvest activities, detailed in the Forest Practice Rules, and establishes general and specific conditions and eligibility criteria for each category for which WDRs can be waived. Implementation and compliance with the general and specific conditions result in timber harvesting projects that are considered to be low impact, and therefore pose no significant threat to water quality. To ensure that the Categorical Waiver is in the public interest and consistent with the Basin Plan (including TMDLs), the Waiver includes new or modified eligibility criteria and general and specific waiver conditions. Revisions were made based on experience with implementation and oversight of the 2004 Categorical Waiver over the past five years and to changes in response to changing conditions, such as declines in populations of anadromous salmonids and increased listings for under section 303(d) of the Clean Water Act for impairment due to elevated water temperatures.

The State Water Board received and accepted as complete three petitions for reconsideration in this matter. All three petitions raise issues primarily pertaining to revised conditions for Categorical Waiver E, for Non-Industrial Timber Management Plans (NTMPs), and to a lesser extent, Categorical Waiver E, for Timber Harvest Plans (THPs).

## **RESPONSE TO PETITIONS**

The following section summarizes and responds to the issues raised in the three petitions. Where issues raised by more than one petition overlap or are identical, they will be addressed together.

### **THE REGIONAL WATER BOARD MET PUBLIC NOTICE REQUIREMENTS**

Both Weger and Farm Bureau maintain that the Petitioners and other landowners were unable to provide testimony to the Regional Board because they did not receive adequate notice. On August 12, 2009, the Regional Board responded to a request by Elizabeth Miller Jennings, Office of Chief Counsel for the State Board, to demonstrate that Petitioners received adequate notice of the revision of the Categorical Waiver, and any relevant information concerning the notice requirements and how they were addressed. The response to that request, included as Attachment 2 to this letter, demonstrates that the Regional Board met and surpassed the noticing requirements of Water Code section 13269 (waiver of waste discharge requirements) and Government Code section 11125.

CalFire and Farm Bureau argue that the Regional Board made changes to the Categorical Waiver during the June 4, 2009 hearing that "were substantial, changed the Waiver dramatically, and were not a logical outgrowth of the previously noticed process." (CalFire Petition at 4.) This is incorrect. None of the changes made at the hearing required the postponement of adoption. The original draft Order containing requirements for existing NTMPs was released March 20, 2009 for the March 24, 2009 public workshop in Fortuna (Exhibit HH), and a subsequent draft was released to the public and submitted to the State Clearinghouse on April 9, 2009 (Exhibit PP). Changes made to early drafts based on public comments were substantial; however, changes made to the draft Order during the June 4, 2009 Regional Board meeting were relatively minor. The only substantive changes made were actually either neutral or favorable to landowners in response to comments presented at the hearing. All other changes were minor clarifications or grammatical corrections.

Substantial changes are shown in Attachment 3 in strike-out and underline.

The most substantive amendment made during the hearing was a provision added as Section III, paragraph 3, which is clearly responsive to landowner concerns about costs and is well within the action as originally noticed. The draft Order required the submittal of an Erosion Control Plan and Road Management Plan over an extended timeframe, based on submittal of Notices of Timber Operations (NTO). Landowners provided testimony at the hearing that these plans would cost too much in light of the current economic realities for timber in the Region, and may be duplicative to already existing plans. The Regional Board amended this provision at the June 4, 2009 public hearing in order to provide the Executive Officer greater flexibility to work with landowners as conditions may warrant, including the ability to extend deadlines and streamline submittals, thereby reducing the impact on small landowners. The full text of the amendment is as follows:

Section III, paragraph 3: The Executive Officer may, upon receipt of a NTO, modify the ECP and/or road plan requirements, (including timing and extent of the required submittal), based on the following:

- terms and conditions of the NTMP,
- amount of total NTMP acreage,
- existence of a Ranch or Road Plan prepared by a qualified professional,
- CESA compliance or acceptable CalFire impaired or special watershed prescription or T/I rule,
- the need for fire reduction,
- applicable Regional Board adopted sediment Best Management Practices for roads or ranches or,
- other relevant characteristic of the hydrographic unit.

**SPECIFIC CONDITIONS OF CATEGORICAL WAIVER E AND F ARE NOT INCONSISTENT WITH THE FOREST PRACTICE RULES AND SHOULD NOT INCREASE CALFIRE WORKLOAD FOR EXISTING NTMPS**

CalFire and other Petitioners raise objections to Specific Conditions of Categorical Waiver E and F for being inconsistent with the Forest Practice Rules (FPR), particularly in the context of nonindustrial timber management plans (NTMP) already approved by CalFire. Much of the concern appears to stem from ambiguity regarding the procedure governing these specific conditions and whether their enforcement will add an additional workload to CalFire. As explained in more detail below, the proposed Waiver conditions are separate water quality provisions adopted independently pursuant to the Clean Water Act and Porter-Cologne Water Quality Act. They are not expected to create any additional workload for CalFire for NTMPs already approved by that agency.

A NTMP is a permit that applies to portions of a property consisting of less than 2500 acres of timberland, subject to conditions imposed in the permit. Like a Timber Harvest Plan (THP), the permit serves as a functional equivalent document under CEQA, must conform to the FPRs, and must be prepared by a licensed registered professional forester (RPF). Once approved, the NTMP is valid in perpetuity and requires notice to CalFire before operations begin. An owner may not take any action which "substantially deviates" from the approved plan unless an amendment is filed and CalFire's Director determines that the amendment is in compliance with the FPRs in effect at the time the original NTMP was approved. (Pub. Res. Code, § 4593.8.)

An NTMP is identical to a THP in the land use activities it authorizes and the threat that activity poses to water quality, except that water quality concerns are heightened because of the long-term nature of the permit. Some were approved as far back as the early 1990s, where it has been demonstrated that the FPRs were inadequate to fully protect water quality. (Exhibit YYY.) Regional Board staff have observed discharges or potential discharges on NTMPs. Most water bodies in the North Coast Region are listed as impaired due to either excess sediment and/or elevated water temperature under section 303(d) of the Clean Water Act. Discharges of sediment resulting from past land use activities, with timber harvest being one of the leading sources, are recognized as major contributing factors causing the impaired conditions. (Exhibit VVV.) Just as new operations are subject to updated and more protective water quality provisions, the same restrictions should apply to ongoing operations under an NTMP.

Petitioners assert that Specific Conditions of Categorical Waiver E and F addressing canopy retention standards above those of the FPRs attempt to govern the conduct of timber operations, and therefore, exceed the authority of the Board of Forestry and CalFire. This is incorrect. While Public Resources Code sections 4551 and 4551.5 do provide the Board of Forestry and CalFire the mandate and authority to adopt forest practice rules and regulations which govern the conduct of operations, they do not preclude another agency with resource protection mandates from requiring additional measures to meet their regulations. The Regional Water Board has independent authority and obligations under the Clean Water Act and Porter-Cologne Water Quality Act to impose additional constraints on timber operations to protect water quality. The California Supreme Court has expressly rejected the argument that the Z'berg-Nejedly Forest Practice Act of 1973 provides the exclusive, "one stop" regulatory process for proposed logging activity that already incorporates detailed consideration of water

quality impacts. (Pacific Lumber Company et al., v. State Water Resources Control Board (2006) [relying on the Forest Practice Act's savings clause, which provides: "No provision of this chapter or any ruling, requirement, or policy of the [Board of Forestry] is a limitation on...the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer".]) "The savings clause can be read as consistent with—and indeed a vital part of—a regulatory scheme that encourages interagency teamwork in the THP approval process by providing forums for collaboration and the airing of any disagreements that may arise, but not at the cost of stripping state agencies of their respective authority to protect resources that may be affected by logging." (Id.)

The Regional Water Board and its staff support interagency teamwork. In exercising the Regional Water Board's independent authority, it is our intent to build on the FPRs and add conditions only as necessary to fully protect water quality. The Waiver contains conditions that are meant to be in addition to—not in conflict with—the Forest Practice Rules. Nor is our intent to impose conditions that increase the workload of CalFire or require that agency to conduct activities not authorized by its own statute and rules. Additional water quality conditions should not trigger the requirement to file an amendment of a NTMP. Operations that contain more stringent environmental protections should not be construed as an action that "substantially deviates" from the approved plan and therefore requiring an amendment under Public Resources Code section 4593.8.

Existing NTMPs enrolling in the Categorical Waiver must meet the eligibility criteria and conditions specified in the Order. Landowners will likely have to make the following changes to existing NTMPs in order to meet those conditions:

- Increase canopy retention standards on Class II watercourses to meet the temperature objective
- Prepare an Erosion Control Plan
- Prepare a Road Plan

These changes are intended to protect water quality and are expected to meet the criteria of "minor deviations" listed in the California Code of Regulations, title 14, section 1090.14, subdivision (a).<sup>1</sup> Under that provision, changes to NTMPs that are presumed to be substantial deviations include *inter alia*: 1) a change in the silvicultural method and cutting system on any portion of the plan area or volume planned to be cut; and 2) any change of operation in, or designation of, the Watercourse or Lake Protection Zone. (Cal. Code Regs., tit. 14, § 1090.14, subd.(b)(1) & (4)(A).) A small reduction in the number of trees harvested in the Watercourse or Lake Protection Zone to meet the Waiver canopy retention standards arguably could be construed as a change in silvicultural method or a change in operation; however, it is highly unlikely that such

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<sup>1</sup> "Minor deviations" means any change, minor in scope, in a plan which can reasonably be presumed not to make a significant change in the conduct of timber operations and which can reasonably be expected not to significantly adversely affect timberland productivity or values relating to soil, water quality, watershed, wildlife, fisheries, range and forage, recreation, and aesthetic enjoyment or to result in a violation of the applicable water quality control plan. (Cal. Code Regs., tit. 14, §1090.14.)

changes that are intended to protect water quality would be considered substantial deviations and treated as major amendments to the NTMP. Typically, when a landowner proposes changes such as these in operations in the Watercourse or Lake Protection Zone, CalFire would consult with Regional Board staff over whether the change should be considered a minor or substantial deviation. The key consideration is whether such change could potentially have a significant adverse effect on public trust resources, including water quality. Changes to existing NTMPs made to meet conditions of the Categorical Waiver would be designed to improve water quality and meet Basin Plan objectives.

Ultimately, CalFire is the agency that must interpret its own regulations, including what constitutes a major deviation to an NTMP. Given the regulation's own references to water quality, however, it is hard to imagine why CalFire would take such a difficult and contorted approach. The definition of a minor amendment includes changes that do not result in a violation of the applicable water quality control plan. (Cal. Code Regs., tit. 14, §1090.14, subd.(a.) Waiver conditions are intended to do just that. Moreover, the current CEQA analysis accompanying the proposed Waiver adequately addresses potentially significant impacts from the additional special conditions in the Waiver. Interpreting small changes as minor deviations would not trigger a discretionary act and additional CEQA review. CalFire's insistence that small changes to meet water quality standards will trigger a major NTMP amendment under FPRs is unnecessary, unreasonable and the sole cause of CalFire's perceived increased workload that it complains of in the petition.

CalFire also raises a workload issue in connection with the enforcement of the Specific Conditions in the Waiver. As explained above, Regional Water Board does not expect CalFire to process amendments associated with incorporating the "Specific Conditions" criteria into an approved NTMP and enforce these conditions. Any requirement or suggestion that a NTMP needs to be amended as a result of additional protective measures was removed from the Waiver. The Regional Board accepts full responsibility for enforcing any water quality requirements not added to a THP or NTMP through the CalFire process.

#### THE INSPECTION PLAN AND REPORTING REQUIREMENTS UNDER THE WAIVER DO NOT DUPLICATE FOREST PRACTICES ACT REQUIREMENTS

CalFire submits that the Waiver Inspection Plan and Reporting Requirements duplicate the Requirements of the Forest Practice Act. In fact, the Waiver inspections are completely different from those required under the FPR. The Waiver was modified to clarify when "qualified professionals" are needed and when not. Also, the description of the expectations of an inspection was clarified.

The preparation of the inspection plan should involve a "qualified professional," however the actual inspections can be carried out by the landowner. We disagree with CalFire's characterization of the need for "technical monitoring assessments" and its contention that landowners will be unable to perform the inspections. Our experience to date has demonstrated that landowners not only are able to determine if an erosion site

remediation is working properly, but also reap the benefits of learning about successes and failures as well as the opportunity to address some problems themselves while in the field. We also find that the landowner develops a level of responsibility associated with self-monitoring and takes pride in the role.

Regarding CalFire filling this role, if a CalFire inspection covers the needs of a landowner for the Waiver, we encourage the landowner to submit the inspection report. However, we cannot require that CalFire perform the monitoring. Joint agency inspections are an interesting concept in the context of landowner self-monitoring. While that requires twice the resources, it has the advantage of increasing understanding and knowledge about the agencies, their regulatory frameworks, and their logic in implementing their respective regulations. We welcome the opportunity, but must caveat that with considerations for staffing resources.

#### THE REGIONAL WATER BOARD'S CEQA ANALYSES IS SUFFICIENT

CalFire submits that at least two findings under the category of Land Use and Planning in the CEQA Initial Study supporting the preparation of a Mitigated Negative Declaration for the Waiver are not correct. Specifically, CalFire asserts that the Waiver will conflict with specific plans such as NTMPs, SYPs, HCPs, and NCCPs. As explained previously, there is nothing in the proposed Waiver, nor its implementation, that will prevent any agency from exercising its authority and mandate (CalFire included) or prevent a landowner from implementing any requirement of another agency. While there may be regulatory overlap, which is common but not always efficient, the addition of specific conditions to allow the Regional Water Board to waive the issuance of Waste Discharge Requirements is not in conflict with any of those processes.

CalFire suggests that the Regional Board staff missed the point they were trying to make regarding the CEQA issue. For the first time in its petition, CalFire maintains that it is likely that the result of new conditions to the Categorical Waiver is that landowners will cancel a portion of existing NTMPs and convert their timberlands to alternative uses. This, CalFire argues, would result in loss of habitat and potentially significant negative impacts to water quality. While we share the general concern over increasing conversion of forestlands throughout the state and to agricultural, residential, and urban uses and their associated impacts to water quality, to conclude that this phenomena results from the Categorical Waiver is speculative. Moreover, CalFire did not raise this CEQA comment in the hearing. (Exhibit S.) Presumably landowner's motivations for these conversions are quite diverse, but are generally based on the anticipation of increased economic value from developing their lands. We don't believe that CalFire has shown there to be any basis to their claim that the new waiver conditions will result in landowners cancelling NTMPs and convert their timberlands. We disagree that two findings in the initial study under Land Use and Planning are incorrect. Public Resource Code section 21064 requires that the initial study identify and evaluate potentially significant effects of the Project on the environment, which are defined as substantial, or potentially substantial, adverse change in the environment (Pub. Resources Code, § 21068). We have evaluated all reasonably foreseeable potential environmental impacts from the waiver and underlying activities that it covers.

**THE REGIONAL BOARD'S FINDINGS ARE SUPPORTED BY EVIDENCE IN THE RECORD; SCIENTIFIC BASIS TO ESTABLISH SEPARATE WATERCOURSE PROTECTION; EROSION CONTROL PLANS; ROAD PLANS**

Petitioners maintain that the Regional Board's findings are not supported by evidence in the record. CalFire challenges the scientific basis for establishing separate watercourse protections and others state that the Regional Board findings do not adequately support or explain the necessity for including the new specific conditions for Categorical Waivers E and F. In fact, the new specific conditions are expressly intended to identify and control nonpoint source waste discharges in violation of the Basin Plan. Waiver findings 13 through 19 directly link the new conditions to identification and reduction of discharges of pollutants that contribute to the impairment of waterbodies as required by the federal Clean Water Act. (Exhibit AAA.) The Staff Report further expands upon the link between the requirements of the Clean Water Act and Specific Conditions of Categorical Waiver E and F. (Exhibit III.)

**TMDLs and Sediment Implementation Policy and Work Plan**

The Total Maximum Daily Load (TMDL) process provides a quantitative assessment of water quality problems, contributing sources of pollution, and the pollutant load reductions or control actions needed to restore and protect the beneficial uses of an individual waterbody impaired from loading of a particular pollutant. The United States Environmental Protection Agency (EPA) has established sediment TMDLs for 19 watersheds in the North Coast Region, and temperature TMDLs for seven of those watersheds. (Exhibit VVV.) Regional Water Board staff are also developing or in the process of developing TMDLs in additional watersheds, such as the Klamath River, Russian River, Elk River, and Freshwater Creek. EPA's TMDLs include recommendations to reduce sediment delivery from the major sources identified in those TMDLs. Based on a review of sediment TMDLs from throughout the North Coast Region, roads and road and harvest related mass wasting are among the most common and significant sources of anthropogenic sediment discharge. (Exhibit VVV.) On November 29, 2004, the Regional Water Board adopted the TMDL Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region, which is also known as the Sediment TMDL Implementation Policy (Resolution R1-2004-0087). (Exhibit PPP.) The Sediment TMDL Implementation Policy states that Regional Water Board staff shall control sediment pollution by using existing permitting and enforcement tools. The goals of the Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment. The TMDL Implementation Policy also directed staff to develop the Staff Work Plan to Control Excess Sediment in Sediment-Impaired Watersheds (Work Plan) that describes the actions staff are currently taking or intend to take over the next ten years, as resources allow, to control human-caused excess sediment in the sediment-impaired water bodies of the North Coast Region. (Exhibit ZZZ.)

The Categorical Waiver furthers the objectives defined in the TMDL Implementation Policy and Work Plan. Conditions and eligibility criteria required for enrollment in the

Categorical Waiver are intended to contribute to reductions in anthropogenic sediment discharges from the sources identified by EPA and constitute implementation of TMDLs.

The Waiver adds conditions designed to meet Basin Plan temperature objectives. The scientific reasoning behind requiring additional canopy is the wide-spread and continued listings of waterbodies in the north coast as impaired from unnaturally high water temperatures. In all cases, shade (and canopy) has been identified as significantly affecting water temperatures. Scientific modeling based on data collected in the Scott and Shasta river watersheds provided a conservative estimate that 85% canopy would meet the Basin Plan water quality objective for temperature. These studies have been presented in public meetings, have been in the public record, and were referenced in the findings 16 through 19 of the Categorical Waiver. (Exhibits RRR-SSS.) We have seen no proof that the FPR minimum 50% canopy retention for non fish-bearing streams maintains "natural receiving water temperature" as required in the Basin Plan water quality objective for temperature. Specific Conditions of Categorical Waivers E and F provide a strategy to manage riparian zones by retaining specific levels of stream side forest canopy that are considered to be adequate to meet the Temperature Objective. However, the Waiver also provides landowners the option of proposing alternative management strategies when they can demonstrate to the satisfaction of the Regional Board that such strategies will meet the Temperatures Objective.

The Weger petition presents water temperature data collected from streams on land owned by the Petitioners, which is said to verify that stream temperatures have remained cold before and after harvesting. The information provided in the petition does not include information describing stream conditions, harvest methods, pre- and post-harvest canopy closure or levels of direct shade on the watercourse or other information necessary to draw meaningful conclusions. However, data such as that provided in the petition accompanied by sufficient additional information to make meaningful conclusions can be used by landowners to demonstrate the effectiveness of site specific alternative prescriptions. The Regional Board encourages monitoring efforts such as this and intend to work with landowners to develop site specific prescriptions that meet their management objectives as well as the Temperature Objective.

There is an important distinction between watercourse protection standards designed specifically to protect water temperature in streams that support anadromous salmonids and standards designed to meet the Basin Plan Temperature Objective, which applies to all surface waters in the North Coast Region. Class II temperature protection provided by the FPRs is intended to prevent Class II watercourses from affecting water temperatures downstream of fish bearing portions of the watershed. The Temperature Objective is designed to protect all beneficial uses present, including those in the Class II watercourse. The Regional Board's approach to meeting the Temperature Objective is to maintain the natural thermal regime of surface waters by retaining or restoring shade on streams at unaltered levels. This is substantially different than the approach taken by the FPRs of determining how much streamside canopy can be decreased without impacting downstream fish bearing reaches.

### Erosion Control Plans

Under the previous waiver, ECPs were required for each Notice of Timber Operations (NTO) for new NTMPs.<sup>2</sup> (Exhibit XXX.) Previously waived NTMPs were not required to prepare and submit an ECP. Under the current waiver, previously waived NTMPs must submit an ECP for the first NTO submitted after June 4, 2010 (one year after approval of the waiver) and an ECP for the entire NTMP area by the first NTO submitted after June 4, 2014 (five years after approval of the waiver). An ECP includes an inventory of controllable sediment discharge sources, a prioritization of each site based on potential impacts to beneficial uses, and a schedule for implementation of corrective measures based on the priority. The waiver provides for a flexible and extended timeline by initially allowing submission of an ECP for portions of the plan area, followed eventually by an ECP for the entire plan area, all of which is due at a time of the landowners choosing, as submittal of the ECP is tied to NTOs. Therefore, landowners who are not actively conducting timber harvesting activities are not required to submit an ECP until such time as they choose to begin harvesting. The timeline for corrective action is further expanded, as landowners propose an implementation schedule, which is subject to approval by the Regional Board.

Erosion control plans are effective in identifying and treating controllable sediment source and have been widely accepted by the timber industry throughout the North Coast. Sediment source analyses from throughout the Region generally agree that much of the sediment impairment of watersheds came from intensive and unregulated tractor logging during the post-war period, essentially from the early 1950 to the early 1970s. This can be seen in aerial photographs from that period, which show large areas recently clearcut, dense networks of skid trails, and streams filled in by roads and debris. (Exhibit VVV.) Vast amounts of sediment was also discharged to streams from these disturbed areas by landslides following large storm events. Such large scale disturbance is no longer permitted under current regulations; however, large volumes of sediment remain in locations where it can discharge to watercourses from numerous sites throughout the region. (Exhibit VVV.) Such sites represent chronic sediment sources that will impede the natural recovery process currently under way if they are left untreated, as well as violations of waste discharge prohibitions in the Basin Plan.<sup>3</sup>

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<sup>2</sup> NTMPs may be up to 2,500 acres in size and last for a period of 80 years. After the initial approval of an NTMP by CalFire, portions of the plan area may be harvested each year upon submittal of an NTO to CalFire.

<sup>3</sup> The following waste discharge prohibitions from the North Coast Basin Plan pertain to timber harvest activities, including; logging, road construction, and associated activities in the North Coast Region:

**Prohibition 1:**

The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.

**Prohibition 2:**

The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.

Programs such as the ECP requirement of the Categorical Waiver and the General Waste Discharge Requirement (GWDR) (Exhibit AAAA) are essential components of region wide efforts to restore and recover impaired beneficial uses, and provide assurance that TMDL load reductions are met.

There is some overlap between the ECP and California Code of Regulations, title 14, section 916.9, subdivision (o), which provides:

“As part of the plan, the RPF shall identify active erosion sites in the logging area, assess them to determine which site poses significant risks to the beneficial uses of water, assess them to determine whether feasible remedies exist, and address in the plan feasible remediation for all sites that pose significant risk to the beneficial uses of water.”

However, this rule only applies to those planning watersheds in which anadromous salmonids are present, and therefore, does not protect all beneficial uses presenting all watersheds. In addition, a program specifically intended for the purpose of identifying and correcting controllable sediment sources according to an implementation plan prepared by the landowners, may reinforce the above rule. Regional Board staff have found without a program that requires foresters to actively survey the plan area for these sites, a portion of existing sediment sources will not be identified and treated.

Since the Categorical Waiver and GWDR were approved in 2004, the majority of new THPs and all new NTMPs in the North Coast Region have included ECPs. The timber industry has responded remarkably well; foresters now routinely identify controllable sediment discharge sources and devise corrective measures and operators have become proficient in restoration work. The Regional Board does not track individual sediment sources or sediment volumes, but the majority of plans that are required to prepare ECPs typically do identify sites in their plan area. Controllable sediment discharge sources are so prevalent in timberlands of the Region, that they are found nearly everywhere that they are looked for. This underscores the point that without a program requiring landowners to actively conduct an inventory, such sites would remain untreated and eventually fail. Expanding the ECP requirement greatly expands the land base on which sediment sources will be identified and treated, and therefore, is one of the most effective tools for wide spread sediment source reduction.

Erosion control plans must include an inventory and corrective measures for sites that meet all the following conditions:

1. is discharging or has the potential to discharge sediment to waters of the state in violation of water quality requirements or other provisions of this Categorical Waiver,
2. was caused or affected by human activity, and
3. may feasibly and reasonably respond to prevention and minimization management measures.

Because the first condition specifies sediment discharges in violation of water quality requirements (ie. Basin Plan Prohibitions or Objectives), it may not be in the public interest to waive WDRs for plans that left such sites untreated. Because of the effectiveness in reducing sediment sources and the benefit to waterbodies throughout the Region, and the necessity of ECPs to support waiving WDRs, the additional expense borne by landowners to identify and reduce waste discharges from their property is justifiable and implements TMDLs.

### Road Plans

Specific Condition 5 of Categorical Waiver E requires that landowners with NTMPs prepare and submit a long term management plan for roads in the plan area (Road Plan) within five years of enrolling in the Waiver. The goal of the Road Plan is to prevent and minimize sediment discharges from roads by ensuring regular maintenance and upgrading roads to current standards.

It is widely recognized throughout the North Coast Region and other forestland areas of the northwestern United States that roads can be significant contributors, if not the main source, of anthropogenic sediment discharge. (Exhibit VVV.) Implementation of proper management measures for roads is one of the most crucial components of any management plan for preventing and minimizing chronic sediment sources. The Road Plan is intended to work in conjunction with the FPRs addressing roads, and fill in the gap where those rules may not be applicable. The FPRs ensure that roads and watercourse crossings meet current standards during an NTO and for the maintenance period following the NTO (one year for non-T and I watersheds and three years for T and I watersheds). Those portions of the NTMP for which have not been under an NTO for several years may not be meet current standards or be maintained regularly or at all. In addition, many NTMP roads are also used for residential or recreational purposes.

The Road Plan is quite similar to provisions contained in section 923.9.2(f) (Measures to Facilitate Incidental Take in Watersheds with Coho Salmon) or section 1093 (Road Management Plan) of the FPRs; in fact, compliance with those rules would likely meet the requirements of the Road Plan. If NTMP roads already meet current standards and are being regularly maintained, a landowner can document that that is the case to satisfy this condition.

Landowners must submit the Road Plan to the Regional Board within five years of enrolling in the Categorical Waiver. The Road Plan requires that landowners submit an inventory of the road system in the NTMP areas, which describes current conditions, a long term inspection and maintenance schedule, and an implementation schedule to upgrade those portions of the road that do not meet current standards. The implementation schedule allows the landowner the flexibility to perform any needed work at a time that meets their management objectives. By allowing up to five years to prepare the plan, and implementation of needed work according to the landowners schedule, we anticipate that any additional expense that may be necessitated by the Road Plan can be spread out over an extended period, and incorporated to some extent into routine operating cost of operating ranch and timberlands.

Because of the role improperly managed roads have had in contributing to sediment impairment in watersheds throughout the Region, and the widely acknowledged benefit of bringing roads into conformance with current standards, the Waiver condition requiring the Road Plan is justifiable. In fact, a long term management strategy for roads on an NTMP can benefit a landowner. Roads are crucial infrastructure to the operation of an NTMP, and may be used for recreation, residential, and other purposes in addition to timber harvesting. Roads are costly to construct, maintain, and repair. Road failures can require costly emergency repair work and interrupt and divert resources away from standard operations on the ownership. Road standards required under the Road Plan designed to prevent or minimize sediment discharges do so by preventing and minimizing road failures. A long term plan to manage roads on an entire ownership can be significantly more cost effective than piecemeal upgrades or emergency repairs.

### Culverts

The Weger and Farm Bureau petitions assert that there is no evidence to support the requirement for upgrading culverts to meet the 100 year return interval flood (Weger petition at 12, line 10). This is in reference to Condition 5 of Categorical Waiver E, which requires landowners to prepare and submit a long term management plan for roads in the NTMP area within five years of enrolling in the Waiver. Under the Road Plan, NTMP roads must meet current standards, one of which is that, "*All stream crossings must have a drainage structure designed for the 100 year return interval discharge and pass any reasonable amount of debris.*" Culverts sized to pass the 100 year return interval discharge is widely accepted as the standard for forest and ranch roads. Section 923.3 of the FPRs, Watercourse Crossings, require that existing culverts must be sized to pass the 50 year return interval discharge and new culverts meet pass the 100 year return interval discharge plus debris.

There appears to be a good deal of misunderstanding regarding compliance with this condition. This condition requires that landowners prepare and submit a long term management plan for roads designed to prevent and minimize sediment discharge throughout the entire life of the NTMP, not just during and immediately after NTOs. A careful reading the of Waiver will explain that it is not a requirement that work to upgrade roads to the standards described on pages 16 and 17 be conducted immediately, but rather, landowners have five years from the time they enroll their plan in the waiver to develop and submit a schedule that informs the Regional Board when work necessary to bring their roads into conformance with current standards shall be implemented.

### COSTS TO NTMP LANDOWNERS BY CATEGORICAL WAIVER REQUIREMENTS ARE REASONABLE

Both Weger and Farm Bureau maintain that existing NTMP landowners would be "harmed" by the conditions of the new waiver. New conditions of the Waiver will place an additional burden on landowners to prevent and minimize waste discharges from their ownerships; however, these additional burdens are the costs required to comply with state and federal water quality laws. Petitioners argue that NTMP landowners give up the right to harvest timber at higher levels in return for regulatory certainty, and are

harmed by the Waiver, which now imposes the same burden on NTMPs as is placed on standard THPs. Petitioners maintain that because they only harvest 25% of their per acre timber volume, their logging costs are higher. In fact, many THPs harvest at similar levels as NTMPs. Landowners chose to invest higher initial costs in preparing an NTMP in order to gain the long term economic advantage of being able to harvest every year without the cost of preparing a new THP. The lower intensity harvest levels of NTMPs reduce the potential impacts to water quality from intensive canopy removal, and as a result, NTMPs as a whole are categorically waived from the requirement to submit a report of waste discharge and receive WDRs.

While it is true that NTMPs practice low intensity harvesting methods, Petitioners have not provided any evidence to show that water quality impacts from ground disturbance, particularly road use, is any less than that resulting from standard THPs. For this reason NTMPs are subject to the majority of FPRs that apply to THPs, such as those that regulate watercourse protection, erosion control, wet weather operations, and others. Nor have the petitioners made the claim that there are any fewer controllable sediment discharge sources on NTMPs than THPs. Because an NTMP can harvest every year, and many do, impacts from constant road use and other ground disturbing activities have the potential to result in chronic sediment impacts to watersheds for a much longer duration than a THP, which expire within three to five years.

Petitioners maintain that the Categorical Waiver “undermines the very nature of NTMPs as set forth by the Legislature, because it requires erosion control plans, road plan, and upgrading infrastructure on par with the standards set for THP and ignores the harvest practices specific to NTMPs.” Erosion control plans and Road Plans are intended to prevent and minimize discharges of waste from roads and other sites related to management activities that can occur regardless of harvesting practices. In giving up the right to harvest timber at higher levels, NTMP landowners do not gain the right to discharge waste to waters of the state without any effort to identify and control those discharges to the extent feasible. All discharges of waste into waters of the state are privileges, not rights. (Wat. Code, §13263, subd.(g).)

The conditions of the waiver are intended to apply specifically to impacts from NTMPs that may occur regardless of the intensity of harvest, namely those from existing controllable sediment sources, roads, and streamside canopy removal. Some additional expense will be incurred by landowners in meeting these conditions, both in preparing the necessary technical reports, in implementing the work, and some reduction in revenue from higher streamside canopy retention. Regional Board staff made efforts to allow flexibility in meeting waiver conditions to the extent feasible so that landowners can coordinate compliance with the waiver with their harvesting activities, thus minimizing or spreading out any additional expenses.

During the process of revising the Categorical Waiver, Regional Board staff invited comments from members of the public, including consulting foresters and landowners with NTMPs. Based on comments we received from these interested parties, we incorporated many changes and expended considerable effort to allow landowners

flexibility in meeting the conditions of the Waiver. Among the most significant changes were extended timelines for submittal and implementation of technical reports such as ECPs and Road Plans, alternative riparian management to meet the Temperature Objective, partial harvesting of riparian zones adjacent to clearcuts [we included a new condition in Categorical Waiver F, which allows THPs that include clearcutting to be waived in an attempt to allow more plans to be eligible for the Wavier). (Exhibit AAA.) In addition, during the June 4, 2009 public hearing, the Regional Board adopted a motion to provide the Executive Officer wide latitude and allow additional flexibility for landowners to meet the waiver conditions (Ex. AAA, Section III, paragraph 3.)

### CONSIDERATION OF COSTS OF NEW WAIVER CONDITIONS

Both Weger and Farm Bureau maintain that the Regional Board did not consider the costs to landowners of implementing the new waiver conditions. This is incorrect. Prior to the June 4<sup>th</sup>, 2009 Regional Board meeting, our staff sent an economic questionnaire to a select group of consulting foresters and landowners to get some sense of the costs of preparing an ECP and Road Plan. (Exhibit RR.) We received three completed questionnaires. (Exhibits UU-WW.)

A full economic analysis was beyond the scope of the Waiver revision and would have required research on normalized costs of conducting inspections, preparing technical documents, implementing erosion control measures, and reducing harvest. It would also have required research into the cost equivalents of environmental benefits that would occur as a result of the increased protections under the waiver. Such an analysis would have been useful but would have required a staff time commitment greater than that for the entire Waiver renewal.

We agree with the Petitioners claim that additional costs to landowners resulting from the new waiver conditions include costs of preparing the ECP and Road Plan, costs of yearly monitoring and reporting, and costs of increased shade canopy requirements. Much of the additional costs incurred to comply with the new waiver conditions will likely be minimal for new plans, as the ECP and Road plan can be prepared concurrently with development of the NTMP. Preparing these plans for previously waived NTMPs will require that qualified professional conduct additional site visits. The Regional Board provided extended timeframes for submittal of the plans (ECP only for each NTO submitted after June 4, 2010 and for the entire NTMP with the first NTO submitted after June 4, 2014 and the Road Plan within five years of enrolling in the Categorical Waiver). The extended timeframes were intended to provide landowners with flexibility in developing the plans, and preferably be able to conduct much of the fieldwork concurrently with other management activities. However, the new waiver conditions are intended to prevent and minimize sediment discharge and meet Basin Plan requirements. Costs incurred to comply with the Basin Plan are necessary and unavoidable.

This also applies to the assertion that additional cost will result from increased shade canopy requirements. The conditions requiring that sufficient shade canopy be retained to meet the Basin Plan Temperature Objective allows landowners substantial flexibility.

Landowners may use any method that can be demonstrated to meet the objective. It is possible that revenue generated from harvesting riparian zone trees will be less than if there was no requirement to meet the Temperature Objective. However, that is true of many of the rules that place limits on harvesting in order to protect public resources. The petitions state that the conditions addressing shade canopy are a, "numeric interpretation of the Basin Plan's temperature objective, which in effect creates a de facto new water quality objective. " We disagree with this statement. Those conditions are explicitly intended to meet the existing Temperature Objective.

We do not agree with Petitioners' claim that there will be additional costs associated with upgrading roads and culverts, nor costs due to delays resulting from noticing requirements. The Road Plan requires that landowners submit an implementation schedule for upgrades to their roads and culvert. These upgrades must be implemented in a timely manner so as to prevent failure and associated sediment discharges. We recognize that maintaining forest and ranch roads in properly functioning condition is costly. The Road Plan is designed to ensure that landowners with NTMPs perform the necessary maintenance and upgrades to keep roads in the plan area functioning properly and in a condition to prevent and minimize sediment discharge. We believe that the cost of maintaining a road system on an NTMP under the Road Plan should not result in any additional expense beyond the cost of maintaining a road system in a responsible manner according to current standards.

Petitioners state that new noticing requirements may cause unnecessary delays that result in lost opportunities and lost income. Landowners seeking to enroll in the Categorical Waiver may not commence activities until they receive confirmation in writing from the Executive Officer that their plan has been accepted. It is our stated goal that the projects that have had thorough Regional Board staff involvement will receive written notice within ten working days of receipt of a complete certification notice. Application procedures under the 2004 Categorical Waiver required that, "[u]nless other timeframes are specified...[Projects] may commence no sooner than fourteen days after receipt by the Regional Board of the applicable documents..." (Exhibit XXX.) We have now committed to providing documentation to landowners that their plans are enrolled in the Categorical Waiver, in essentially the same time frame as the 2004 Categorical Waiver.

Petitioners also maintain that additional delays and lost income will result from the requirement that landowners submit notice of operations on an NTMP, accompanied by an updated ECP, at least five days prior to commencement of operations. The five-day notification requirement has been carried over unchanged from the 2004 Categorical Waiver. We have received no comments or complaints during the past five years that the NTO notification has resulted in any additional expense. Petitioners mistakenly state that landowners must wait for written notification from the Executive Officer to approve the updated ECP for each NTO. Written notification from the Executive Officer is only required at the time of the initial enrollment in the Waiver. The updated ECP may either consist of an ECP for the NTO, if no ECP has been done for that area, or if an ECP has been done for the area, documentation that the ECP reflects current conditions.

### CATEGORICAL WAIVER DOES NOT VIOLATE WATER CODE SECTION 13360

Petitioners argue that when adopting waiver of waste discharge requirements, the Regional Board is prohibited under Water Code section 13360 from specifying the manner of compliance. The specific requirement of canopy retention to meet the Basin Plan Temperature Objective and those associated with the Road Plan specify the manner of compliance, and therefore exceeds the Regional Boards authority. This is inaccurate. The Specific Conditions of the Categorical Waiver are not requirements, but are conditions that must be met by landowners when voluntarily electing to enroll in a conditional waiver. The Categorical Waiver is just one option available to such landowners to cover liabilities from potential discharges of waste resulting from their timber harvesting activities. Moreover, the Waiver includes an option to propose alternatives in recognition of site specific conditions. (Exhibit AAA, Section I(E)(4)(b).)

### MITIGATION REQUIREMENTS MAY EXTEND BEYOND THE PERMIT

Farm Bureau objects to the terms of the Categorical Waiver exceeding the life of the Waiver, and concludes that this is contrary to the Water Code section 13269(a)(2)(f). This is incorrect. The Waiver expires on June 4, 2014, yet requires submission of an ECP for the entire NTMP by the first NTO submitted after June 4, 2014. The Water Code specifies that waivers may not exceed five years in duration, but does not prevent waivers from requiring conditions that may continue past the life of the waiver.

### THE FOREST PRACTICE RULES ARE CURRENTLY INADEQUATE TO PROTECT WATER QUALITY

Petitioners all ask for consideration of BOF rules in progress before creating a different regulatory framework that is "unnecessary" and "duplicative" for protection of beneficial uses. Petitioners reference section 916.9 of the Forest Practice Rules, Protection and Restoration in Watersheds with Threatened and Impaired Values (T & I rules). (Exhibit BBBB.) This section, along with section 923.9, Roads and Landings in Watersheds with Threatened and Impaired Values, apply to any planning watershed where populations of anadromous salmonids listed as threatened or endangered under state or federal Endangered Species Act are present. These rules are a suite of watercourse protection measures that are more stringent than the standard rules under the Forest Practices Act. Perhaps most pertinent to the Categorical Waiver are the rules regulating Watercourse and Lake Protection Zones (WLPZ), which specify buffer widths, minimum canopy retention levels, and measures to retain large trees for recruitment of large wood to streams. Under the T & I rules, the WLPZ on a Class I watercourse is a minimum of 150 feet wide. Within the inner 75 feet of that zone, post harvest overstory vertical canopy cover must be at least 85% and at least 65% for the remainder of the zone. Watercourse protection levels for Class II watercourses are the same for both T & I and non-T & I watersheds; 50 to 100 feet wide depending on hillslope gradient, and post harvest retention levels of at least 50% total canopy.

While the T&I Rules meets water quality needs in many ways, there are areas of disagreement with regard to the protection of water quality. For one, applying the rules only to the limit of anadromy ignores the upstream cold water beneficial uses that the water boards are charged with protecting. Warm upstream waters can impact

downstream areas, and there are cold water beneficial uses in water bodies that do not contain listed anadromous species.

The BOF released proposed revisions to the T & I rules, which are now called the Anadromous Salmonid Protection rules (ASP), for public comments on May 8, 2009 and a revised draft on July 24, 2009. (Exhibit NNN.) Regional Board staff have participated throughout the revision process and submitted comments on the draft versions distributed on May 8, 2009 and July 24, 2009. While Regional Board staff believe that the proposed rules represent a substantial step forward in protection of stream temperatures in California, they do not adequately ensure protection of all beneficial uses present throughout the North Coast Region and therefore cannot be considered to meet the water quality standards in all cases.

On September 3, 2009, Regional Water Board staff submitted detailed comments to the BOF on the proposed ASP Rules finding that operations conducted under timber harvesting plans, including NTMPs, that incorporate the proposed ASP rules could result in violations of the Basin Plan. (Exhibits OOO-PPP.) The Rules do not recognize the need to protect all beneficial uses of water and comply with water quality objectives, and do not address waterbodies listed as impaired under Section 303(d) of the Clean Water Act. As before, they only apply to watershed where listed salmonids are present, and therefore are geographically limited. The "Preferred Management Practices" are included as suggestions only, and therefore lack necessary assurances that the practices will be implemented. Section 9169(k)(1)&(2) and (l)(3)&(4), for winter road use provisions do not comply with the Basin Plan and may lead to discharges because it allows wet weather road use to continue *until* a discharge occurs.

Farm Bureau argues that the Waiver is inconsistent with the State Water Resources Control Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program by failing to enter into a Management Agency Agreement with CalFire to take the lead in implementing the Nonpoint Source Program. Farm Bureau argues that the Categorical Waiver fails to adequately consider the activities of CalFire, particularly its development of the new rules for watersheds with Threatened and Impaired values. This is incorrect. In fact, the Categorical Waiver relies heavily upon CalFire in its role as lead agency in reviewing and approving timber harvesting plans and builds on the Forest Practice Rules. We continually work with CalFire and the BOF to incorporate adequate water quality protection into the FPRs and believe that if done adequately, this is the most effective and efficient way to protect waters of the state from the impacts of timber harvesting and associated waste discharges. However, we also recognize that our agencies have different mandates and responsibilities, and we are not always successful in getting the measures we believe to be necessary to meet all applicable water quality regulations incorporated into the FPRs (see discussion on ASP Rules above).

## **CONCLUSION**

Revisions to the Categorical Waiver are designed to meet Basin Plan objectives and implement sediment and temperature TMDLs and the State Non-Point Source Policy. The Regional Board made a determination that the timber harvest activities conducted

in compliance with the conditions described within the Categorical Waiver are consistent with the Basin Plan and is in the public interest pursuant to Water Code section 13269, subdivision (a)(1). The Regional Board has made a significant effort to provide a comprehensive, consistent, and flexible mechanism for landowners to comply with various water quality regulations and policies through their timber harvesting plans, thereby minimizing the regulatory burden.

The Categorical Waiver does not limit or change the existing authorities or responsibilities of other agencies, including CalFire. The Waiver contains conditions that are meant to be in addition to the Forest Practice Rules in order to fully protect water quality. These conditions were designed to ensure that landowners enrolled in the Waiver are in full compliance with state and federal water quality laws, including TMDLs. While there maybe other mechanisms to ensure compliance, particularly for existing NTMP owners, it was the Regional Board's intent to consolidate its requirements in one permit for efficiency and effectiveness.

Sincerely,

*Original signed by*

Catherine Kuhlman  
Executive Officer

## ENCLOSURES

Attachment 1—Administrative Record Index

Attachment 2— August 12, 2009 Regional Board Notice Requirements Response Letter

Attachment 3—Substantive Changes to Waiver During June 4, 2009 Hearing

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